IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No: 18211 of 2004

Between:

M/s. Sai Prakash Cinema Theatre, (Electricity S.C.No.393) rep. by its Managing partner Mr.D.M.K.Gandhi,
R/o.Pedanandipadu, Guntur Dist.

..... PETITIONER

AND

1 The A.P. Transco, rep. by its Chairman & M.D.,
Vidyut Soudha, Hyderabad.
2 The Superintendent Engineer (Operation Circle),
A.P. Transco APSDCL, 4/7, Brodipet, Guntur.
3 The Asst. Divisional Engineer, (Operation) A.P.Transco, Ponnur, Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or a direction more particularly in the nature of writ of Mandamus declaring that the inaction on the part of the Respondents in refunding an amount of Rs.96,845/- along with interest @ 24% per annum with effect from 25-3-2000 to the petitioner is highly, illegal, improper unjust and offending Articles 16 and 300-A of the Constitution of India and consequently direct the respondents to refund the said amount of Rs.96,845/- along with interest @ 24% per annum with effect from 25-3-2000 and to pass.

Counsel for the Petitioner: MR.GANDURI NAGESWARA RAO

Counsel for the Respondents: (SC FOR AP TRANSCO) V.AJAY KUMAR

The Court made the following:

ORAL ORDER:-

Claiming refund of an amount of Rs.96,845/- along with interest at 24% per annum with effect from 25.03.2000 from the respondents, the Writ Petition is filed.

The petitioner is a cinema theatre. The 3rd respondent issued a Provisional Assessment Notice on 04.06.1999 stating that on investigation of the theatre premises the petitioner was found to have pilfered electricity, determined the value of the energy pilfered at Rs.3,85,381=75 and directed the petitioner to pay an amount of Rs.1,92,690=90 along with reconnection charges of Rs.50/- and Rs.150/- towards supervision charges for obtaining restoration of power supply, pending final enquiry by the Divisional Engineer (Assessments), Vijayawada. The supply of energy to the petitioner's theatre was disconnected on 04.06.1999. Against the Provisional Assessment, dated 04.06.1999, the petitioner approached this Court in W.P.No.11733 of 1999. By an order, dated 08.06.1999, this Court disposed of the Writ Petition at the stage of admission directing the respondents to conclude the enquiry expeditiously and also directed that the electricity supply should be restored to the petitioner on his depositing half the demanded amount. Consequent, on the order in the above Writ Petition, the petitioner paid an amount of Rs.96,845/- and also made a representation to the Divisional Engineer (Assessments), Vijayawada, challenging the Provisional Assessment, dated 04.06.1999.

While so, the respondents also filed a Criminal case in C.C.No.4 of 2003 against the petitioner on the file of the II Additional Junior Civil Judge-cum-Judicial First Class Magistrate, Bapatla, under Sections 39 and 44 of the Indian Electricity Act, 2003 alleging pilferage by the petitioner. Eventually, by the Judgment, dated 16.02.2004, the petitioner was acquitted of the charges in C.C. No.4 of 2003 recording that the prosecution failed to prove the guilt of the petitioner on the charges of pilferage of energy, beyond reasonable doubt.

The Divisional Engineer (Assessments), Vijayawada, by proceedings, dated 30.11.1999, issued the final assessment order. Aggrieved thereby, the petitioner preferred an appeal to the 2nd respondent herein. By proceedings, dated 25.03.2000, the 2nd respondent – appellate authority determined the petitioner's liability towards the pilferage in an amount of Rs.92,484=25, scaling down the earlier provisional assessment at Rs.1,74,910/- finally determined by the 3rd respondent. The petitioner has not challenged the orders of the 2nd respondent, dated 25.03.2000, confirming the primary order determining the petitioner's pilferage of energy and determining his liability for the pilferage at Rs.92,484=25.

In this Writ Petition, petitioner's case is that since he was acquitted in C.C.No.4 of 2003 of the charges of pilferage, he should be treated as not having been involved in the pilferage and the amount of Rs.96,845/- paid by him pursuant to the interim orders of this Court in W.P.No.11733 of 1999 should be refunded by the respondents along with the interest claimed by him. This contention of the petitioner is misconceived.

The fact that he was acquitted of the charges, in C.C.No.4 of 2003 does not *ipso facto* set at naught the final quasi-judicial determination of the petitioner's involvement in the pilferage of energy nor its confirmation by the 2nd respondent in the proceedings dated 25.03.2000. In the later proceedings, his liability for the pilferage was determined at Rs.92,484/-. As neither the primary proceedings nor the appellate proceedings were challenged, they have become final and are unassailable. They are not *ipso facto* nullified by the acquittal of the petitioner in C.C.No.4 of 2003.

In the above analysis, there are no merits in the Writ Petition, and the same is accordingly dismissed.

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GODA RAGHURAM, J

Date: 16.06.2005

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To

1 The Chairman & M.D., A.P. Transco,
Vidyut Soudha, Hyderabad.
2 The Superintendent Engineer (Operation Circle),
A.P. Transco APSDCL, 4/7, Brodipet, Guntur.
3 The Asst. Divisional Engineer, (Operation) A.P. Transco, Ponnur, Guntur Dist.

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